IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 1033 of 1994

Sree Vasantrao Banduji Patil
Trust ..Petitioner

vs.

1. The State of Maharashtra & Ors. ..Respondents

Shri T.S.Ingale for petitioner
Smt.Sushma Bhende,A.G.P. for respondent no.1 to 3
Shri R.V.More for respondent nos. 6a to 6d.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
23rd June, 2005

ORAL ORDER:

1. By this petition under Article 226 of the Constitution, the petitioner Trust is seeking to challenge the order of the Deputy Collector and Competent Authority granting exemption to respondent no.6 under sec.20(1) of the Urban Land (Ceiling and Regulations) Act, 1976, hereinafter referred to as the "Act". The petitioner is also challenging the notice issued by the Deputy Collector and Competent Authority dated 2nd February, 1994 directing the petitioner to hand over possession of the surplus land to the respondent no.6. Briefly stated the facts are that the respondent no.6 along with his brothers Anna Narsing Mali and Mahadeo Krishnaji Mali were the owners of land bearing survey no.241/3 (Part)

admeasuring 3461.50 sq.meters and 241/4 admeasuring 9700 sq.meters situated at Sangli. Respondent no.6 filed a return under sec.6 of the Act and thereafter proceedings under sections 8 and 9 of the Act were held and by order dated 16th July, 1979 an area admeasuring 13161.50 sq.meters was declared as surplus on 30th November, 1982 and notification under section 10(1) of the Act came to be published in the Govt.Gazette on 5th May, 1983. Thereafter on 6th August, 1983 notification under sec.10(3) of the Urban Land Ceiling Act was issued and it was declared that with effect from 25th August, 1983 as specified therein the said surplus land shall be deemed to have been acquired and came to be vested in the State free from all encumbrances. The appeal preferred by the respondent no.6 against the order dated 6th August, 1979 being ULC Appeal No.70 of 1983 was dismissed on 2nd December, 1983.

2. The petitioner is a public charitable educational trust and is conducting various colleges in the city of Sangli. It appears that the petitioner in December, 1982 had made an application for allotment of land for construction of medical college, hospital and also hostel. This request was considered by the Technical Scrutiny Committee and through Collector, Sangli forwarded

to the State Government recommending allotment of the surplus land to the petitioner Trust. In pursuance of the report of the Technical Scrutiny Committee an allotment order was made in favour of the petitioner in respect of the said land on 20th September, 1983. Notice under sec.10(5) of the Act came to be issued on 25th November, 1983 and possession of the land was obtained on 3rd December, 1983 and handed over to the petitioner institute and a mutation entry was duly effected in the village record recording the name of the petitioner institute as owner of the land.

3. In the mean time respondent no.6 filed an application for grant of exemption under section 20(1) of the Act on 27th September, 1983. The respondent no.6 also filed Writ Petition No.4066 of 1984 challenging the orders of the Dy.Collector and Competent Authority and the Collector as well as notice under sec.10(5) of the Act. The writ petition was admitted by the Division Bench and order of statusquo was passed on 10th October, 1984. . It appears that that the exemption application preferred by respondent no.6 on 27th September, 1983 was rejected by the State Govt. vide order dated 16th July, 1984 inter alia on the ground that third party rights have already been created in favour of the petitioner institute. The

respondent no.6 thereafter filed a fresh application for exemption under sec.20(1) of the Act. The writ petition was withdrawn by the respondent no.6 on 23rd September, 1988.

4. The State Govt. vide impugned order dated 27th December, 1988 granted exemption in favour of respondent no.6 under section 20(1) of the Act without any notice to the petitioner. The petitioner, therefore, approached the State Government requesting to set aside the exparte order and the state Govt. was pleased to stay all further proceedings. The said order was challenged by respondent no.6 by filing Writ Petition No.2488 of 1990 and this petition was admitted. Vide impugned letter dated 2nd February, 1994, the Deputy Collector and Competent Authority informed the petitioner that the State Govt. has vacated the stay granted earlier and directed the petitioner to hand over possession of the said land to respondent no.6.

5. Shri Ingale learned Counsel appearing for the petitioner strenuously submitted that as the land had absolutely vested in the State Govt. on 25th August, 1993 as specified in the notification issued under sec.10(3) of the Act the rights of the owners had already been extinguished and there is

no power under sec.20(1) to pass an order granting exemption on the application which was filed belatedly on 27th September, 1983. Shri Ingale contended that in any event the land in question was already vested to the Govt. with effect from 25th August, 1983 and it was allotted to the petitioner and since the petitioner was in actual physical possession of the land the impugned order of exemption passed without notice to the petitioner is wholly illegal and without jurisdiction. Shri Ingale submitted that on allotment of the land the same was vested in the petitioner and the State Govt. had no power or jurisdiction to make any order in respect of the said land especially when earlier application claiming similar relief was rejected by the State Government. Shri More, learned Counsel appearing for respondent no.6, on the other hand, submitted that under sec.20(1) read with sec.10(3) an application for exemption cannot be maintained before the excess is determined under sec.10. He submitted that the application for exemption preferred after Sec.10(3) notification was perfectly maintainable and the State Govt. had discretionary power to grant such application. He relied upon the decision of the Supreme Court in Special Officer and Competent Authority, ULC and another Vs.P.S.Rao; (2000)7 SCC 213. Shri More

also submitted that allotment of the land was made in favour of the petitioner trust in a clandestine manner, even when application made by respondent no.6 for exemption was pending. He submitted that the allotment of the land was totally malafide and arbitrary. According to him, the speed with which the allotment was made itself indicates that the State Authorities were bent upon to make undue favour to the petitioner. He also submitted that the second application for exemption was really in the nature of continuation of the first application.

6. At the outset we may mention that the order of allotment in favour of the petitioner is not challenged before us and, therefore, the question of validity of the said order does not arise in the present proceedings. Shri More is, however, undoubtedly right in contending that an application under sec.10(1) can be made only after sec.10(3) notification was issued. In P.S.Rao the Supreme Court has categorically ruled that such application would lie after notification under sec.10(3) has been issued and even after the possession is taken such application will be maintainable. The Supreme Court, however, clarified that they were not dealing with the situation where the possession was taken over and third party rights have been

created. In the present case third party rights have been already created in favour of the petitioner. In fact, the earlier application of the petitioner came to be rejected on the ground that rights have created in favour of the petitioner. Even if it is assumed that the second application was continuation of the first as suggested by Shri More the order of exemption could not have been made without prior notice to the allottee i.e. the present petitioner. The impugned order of exemption has been passed in total violation of the principles of natural justice. We are, therefore, inclined to allow this petition on the short ground that the order could not have been passed without prior notice to the petitioner in whose favour allotment is already made. Therefore the impugned order passed by the Deputy Collector and Competent Authority granting exemption in favour of respondent no.6 is quashed and set aside. The notice dated 2nd February, 1994 also stands quashed and set aside. The State Government is directed to decide the exemption application made by the respondent no.6 afresh after giving an opportunity of personal hearing to the petitioner as well as to respondent no.6. The application shall be disposed of expeditiously and in any event within four months from today. All contentions on merits are left open to the parties.

Till the exemption application is finally decided the petitioner shall maintain statusquo in respect of the said land. Petition is disposed of accordingly with no order as to costs.